

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Diane Devine Mizusawa)	
Plaintiff)	Civil Action No.
)	1:08-cv-00281
v.)	
)	
High Liner Foods (USA) Inc.)	
)	
Defendant)	

MOTION TO REMAND

NOW COMES, the plaintiff, Diane Devine Mizusawa, in the above-captioned matter, by counsel, Boynton, Waldron, Doleac, Woodman & Scott, P.A., and respectfully requests this Court grant this Motion to Remand stating in support thereof:

1. The plaintiff originally filed a Writ of Summons for this Action in Rockingham Superior Court on June 23, 2008.
2. Defendant's counsel filed a Notice of Removal on July 14, 2008 on the basis that Count IV of the Complaint presented a federal question pursuant to 28 U.S.C. 1331. On July 21, 2008, the plaintiff filed a Motion to Amend the Complaint to remove Count IV. Because the plaintiff filed its Motion to Amend before the defendant served a responsive pleading, the plaintiff may amend her pleadings as a matter of course. See Fed. R. Civ. Pro. 15.
3. Because the plaintiff has removed Count IV, this Court no longer has jurisdiction over the remaining state claims and this Action must be remanded back to the Rockingham Superior Court. See Wright, 14C Federal Practice and Procedure, 3d § 3739 (updated 2008)(stating "if at any time before final judgment it appears that the district

court lacks subject-matter jurisdiction, the case shall be remanded)(citations omitted)(emphasis added)..

WHEREFORE the plaintiff respectfully prays this Honorable Court as follows:

- A. Grant this Motion to Remand;
- B. Remand the above-captioned matter to the Rockingham Superior Court;
- C. All further relief which this Court deems just and proper.

RESPECTFULLY SUBMITTED:

DIANE DEVINE MIZUSAWA

By her attorneys:

BOYNTON, WALDRON, DOLEAC,
WOODMAN & SCOTT, P.A.

Dated: July 21, 2008

By: /s/Amy Mackin
Amy C. Mackin, Bar # 17721
Ralph Woodman, Bar # 2790
82 Court Street, PO Box 418
Portsmouth, NH 03802-0418
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Motion to Remand was electronically served through ECF, this 21st day of July 2008 to Christopher Cole, Esq. and Karyl R. Martin opposing counsel.

/s/ Amy C. Mackin
Amy C. Mackin